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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,105	12/18/2000	Michael J. Schlichting		5257

20606 7590 09/09/2004

KEITH FRANTZ
401 WEST STATE STREET
SUITE 200
ROCKFORD, IL 61101

EXAMINER

AMIRI, NAHID

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/740,105

Applicant(s)

SCHLICHTING ET AL. *SA*

Examiner

Nahid Amiri

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, **the vertical positioning structure, first and second elongated downwardly facing stop surface portion, upper portions of the sidewall structure**, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686

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F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 5-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim (Figs. 1-12) of U.S. Patent No. D450,855 S. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

In regard to claims 5-10, 13 of instant application correspond to claim (Figs. 1-12) of US Patent No. D450,855 S.

In regard to claims 12, 14 of instant application, US Patent No. D450,855 silent in regard to those specific dimension of legs in respect with each other and thickness of horizontal surface structure . It would have been an obvious matter of design choice to have one leg with respect to other leg having 1/3 to 2/3 of the first lateral distance, and horizontal surface structure of greater than approximately 0.06 inch thick, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Claim 11 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim (Figs. 1-12) of U.S. Patent No. D450,855 S in view of US Patent No. 6,519,901 B1 Nelson et al.

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In regard to claim 11 of instant application corresponds to claim (Figs. 1-12), except '855 does not disclose the free ends of the legs are fabricated from resilient material. Nelson teaches Figs. 5a, 5d, column 6, lines 55, the hub 55 formed from resilient material which may be deformed sufficiently to allow the structure 53 to be protected. It would have been obvious to one having ordinary skill in the art at the time of invention was made to formed the free ends of the legs formed from a resilient material in order to maintain itself about the frame member in order to protect the structure as taught by Nelson.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 3,634,984 Murphy

US Patent No. 4,275,532 Watson

US Patent No. 5,497,585 Engler

US Patent No. 6,367,419 B1 Gosselin

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nahid Amiri whose telephone number is (703) 305-4241 and Fax number is 703-305-7687. The examiner can normally be reached on Monday-Friday from 8:00-5:30 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Carl Friedman can be reached at (703) 308-0839.

na 

August 31, 2004



Carl D. Friedman
Supervisory Patent Examiner
Group 3600